BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014110073 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On October 27, 2014, Parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming the Fairfield-Suisun Unified School District (District).

On November 5, 2014, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[2] The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.[3] These requirements prevent vague and confusing complaints, and promote fairness by providing the

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

[2] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[4]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[5] The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.[6] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[7]

DISCUSSION[8]

Student alleges six problems in the complaint, the majority of which are insufficient, as discussed below.

In Problem One, Student raises problems with a prior due process case he filed against the Solano County Office of Education which resulted in a settlement agreement between the parties. Student contends that he is not advancing because of the settlement agreement. He also appears to allege that information was added to the settlement document. However, Student fails to allege how the settlement agreement with Solano County Office of Education affects his education with District. He fails to allege how or why District is bound

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[4] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[5] Sen. Rep. No. 108-185, *supra*, at p. 34.

[6] *Alexandra R. v. Brookline School Dist*. (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

[7] Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

[8] In its NOI, District also alleges that certain of Student's issues are beyond the jurisdiction of OAH or raise issues outside the two-year statute of limitations for due process complaints. These contentions are not properly brought in an NOI but rather should be raised through a motion to dismiss. They are therefore not addressed in this Order.

by his settlement agreement with another educational entity. Student also fails to allege if and how District is failing to implement the settlement agreement and why that failure has resulted in a denial to him of a free appropriate public education. For these reasons, Student's Issue One is insufficient as plead in its entirety.

In Problem Two, Student alleges that he needs a classroom aide because he is deaf/hard of hearing. However, Student fails to state during what time frame he needed an aide, why the fact that he is deaf or hard of hearing in and of itself requires that he have a classroom aide, when and if he requested an aide from District during the IEP process, and what, if any, District's response was. For these reasons, Student's Problem Two is insufficient in its entirety.

In Problem Three, Student states that District is implementing his last agreed upon individualized educational program, which was signed in 2012. He states that this is because of the prior settlement agreement he entered into with Solano County Office of Education. However, Student fails to state what, if anything, District has done to deny him a FAPE. Student states that he does not want to participate in an IEP meeting pending resolution of the instant due process complaint, but fails to state an allegation that relates to his identification as a special needs child, his evaluation process, his placement, or services. For these reasons, Problem Three is insufficient in its entirety as pled.

In Problem Four, Student states that District held two IEP team meetings for him. He contends that his parents were only invited to the second meeting and were excluded from the first one. However, Student fails to state when these meetings took place. For this reason, Problem Four is insufficient.

Student's Problem Five contains two main allegations. In the first, Student alleges that his IEP includes the provision to him of an FM hearing system. Student contends that District failed to provide him with the system during the 2013-2014 school year. This allegation is sufficient as pled because it puts District on notice of what the issue is and when the actions allegedly took place.

In the second portion of Problem Five, Student contends that District put the FM system back in place during the 2014-2015 school year without his parents' knowledge and that he was injured by someone removing his hearing aids. However, Student fails to state how District's actions in putting the FM system back in place denied him a FAPE. He also fails to state when his hearing aids were removed, who removed them, for how long they were removed, and how their removal denied him a FAPE. For these reasons, the second paragraph of Problem Five is insufficient as presently stated.

In Problem Six, Student states that District has hired an attorney to represent it. He fails to state how this fact has denied him a FAPE. Student also states that since being placed at District, he has had an overall decrease in learning and comprehension. Student however fails to state when he began attending school at District, what his alleged regression

was, and what District has done or failed to do that caused that regression. For these reasons, Problem Six of Student's complaint is insufficient in its entirety.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.[9] Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. The first paragraph of Student's Problem Five, alleging a failure to implement Student's IEP during the 2013-2014 school year by not providing Student with an FM system, is sufficiently pled under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Problems One, Two, Three, Four, the second half of Problem Five, and Problem Six of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[10]

4. The amended complaint shall comply with the requirements of title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this Order.

5. If Student's parent wants assistance from OAH in identifying her issues for the amended complaint, she should immediately contact OAH.

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9 Ed. Code, § 56505.

10 The filing of an amended complaint will restart the applicable timelines for a due process hearing.

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on the first paragraph of Problem Five of Student's complaint, as stated in paragraph one of this Order.

DATE: November 7, 2014

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings